IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6131 OF 2007

Anandrao Baburao Deshmukh & Ors..... Petitioners

Vs.

Sudam Kisan Deshmukh & Ors. .... Respondents

Mr. S.V. Sadavarte for Petitioners.

CORAM : A.P. DESHPANDE, J.
DATE : 17TH OCTOBER, 2007

P.C.

1) The Plaintiff moved an application seeking temporary injunction restraining the defendants from prohibiting the plaintiff to take water from the well for two days in a week through the electric motor installed by them and pipeline installed for irrigation, till the disposal of the suit. The temporary injunction so claimed was granted by the Trial Court by the order dated 13th April 2004. On an application moved by the present petitioners, after a period of about 2 years, by an order dated 22nd March 2006, the Trial Court has set aside the order purportedly in exercise of jurisdiction under Order 39, Rule 4 of C.P.C. The said order dated 22nd March 2006 was challenged by filing Miscellaneous Civil Appeal No. 309 of 2006. The first Appellate Court being of the view that

the case of the petitioners falls outside the compass of Rule 4 of Order 39 has interfered with the order dated 22nd March 2006 and after setting aside the same, has restored the temporary injunction order. The net effect of the impugned order is permitting the plaintiff to draw water for irrigation twice a week.

2) Perused the order. The same does not call for any interference in exercise of writ jurisdiction. The suit is of the year 2003. Though I decline to interfere with the impugned order, I hope and trust that the Trial Court shall proceed to decide the suit as expeditiously as possible and preferably within a period of six months from today.

3) The learned counsel for the petitioners apprehend that the observation made in the impugned order may influence the trial court while deciding the suit on merit. As the observations in the impugned order are prima facie in nature, the same would not weigh with the Trial Court while deciding the suit on merits.

(A.P. DESHPANDE, J.)